

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 18, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1663

Cir. Ct. No. 2015SC1039

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

BAY SHORE APARTMENTS,

PLAINTIFF-RESPONDENT,

V.

JENNIFER WESTPHAL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County:
STEVEN G. BAUER, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ Jennifer Westphal, pro se, appeals a judgment of eviction. Westphal contends that the court erred in determining that her landlord,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Bay Shore Apartments provided her with proper notice, and in determining that she breached a condition of her lease. For the reasons discussed below, I affirm.

BACKGROUND

¶2 Westphal entered into a month-to-month lease with Bay Shore Apartments. The lease provided that Westphal:

agrees not to:

....

d. have pets or animals of any kind in the unit without the prior written permission of the Landlord, but the landlord will allow the tenant to keep an animal needed as a reasonable accommodation to the tenant's disability, and will allow animals to accompany visitors with disabilities who need such animals as an accommodation to their disabilities; **NO PETS ARE ALLOWED, SEE LANDLORD !!!!**

¶3 In July 2015, Bay Shore Apartments commenced a small claims action for eviction on the basis that Westphal had breached the provision of her lease prohibiting pets. A hearing was held on the complaint. At the hearing, Clarence Knaup, a general partner of Bay Shore Apartments, testified that under terms of Westphal's lease, pets are not permitted without prior approval. Clarence testified that on June 8, 2015, he observed a cat in Westphal's apartment through a window. Clarence testified that after observing the cat in Westphal's apartment, Westphal was sent a five-day notice by certified mail to remove the cat from her apartment. A copy of the five-day notice was admitted into evidence, as well as an affidavit indicating that the notice had been sent to Westphal's address by certified mail and a copy of the certified mail receipt with Westphal's signature on it.

¶4 Peter Knaup, Clarence’s brother, testified that on June 19, 2015, he was working at Bay Shore Apartments. Peter testified that he observed a cat walking toward the door to Westphal’s apartment, he heard the screen door to Westphal’s apartment open and close, and that he did not observe the cat after that. Clarence testified that on June 22, Westphal was sent by certified mail a fourteen-day notice that her lease was being terminated. *See* WIS. STAT. § 704.17(1)(b). A copy of the fourteen-day notice was admitted into evidence, which contained a notation that the notice had been posted at Westphal’s premises, as well as an affidavit indicating that the fourteen-day notice had been sent to Westphal’s address by certified mail and a copy of the certified mail receipt with Westphal’s signature on it.

¶5 Westphal testified that she had “g[o]t rid of the cat” within five days of her receipt of the five-day notice, and she disputed that the cat observed by Peter belonged to her. Westphal did not dispute that she received by certified mail either the five-day notice or the fourteen-day notice.

¶6 The circuit court found that Westphal received proper notice and that Westphal was in possession of a cat in violation of her lease agreement. The court granted Bay Shore Apartments’ request for eviction and entered a judgment of eviction. Westphal appeals.

DISCUSSION

¶7 Westphal contends the circuit court erred in determining that she was properly served notice by Bay Shore Apartments. WISCONSIN STAT. § 704.21(1) provides that notice by a landlord may be given as follows:

- (a) By giving a copy of the notice personally to the tenant or by leaving a copy at the tenant’s usual place of

abode in the presence of some competent member of the tenant's family at least 14 years of age, who is informed of the contents of the notice;

(b) By leaving a copy with any competent person apparently in charge of the rented premises or occupying the premises or a part thereof, and by mailing a copy by regular or other mail to the tenant's last-known address;

(c) If notice cannot be given under par. (a) or (b) with reasonable diligence, by affixing a copy of the notice in a conspicuous place on the rented premises where it can be conveniently read and by mailing a copy by regular or other mail to the tenant's last-known address;

(d) By mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last-known address;

(e) By serving the tenant as prescribed in s. 801.11 for the service of a summons.

¶8 The circuit court determined that notice was properly provided to Westphal under WIS. STAT. § 704.21(1)(d), by certified mail. Westphal argues that services of the notice was not proper because she was not personally served the notice. However, personal service is just one of five permissible forms of service under § 704.21(1). Pursuant to § 704.21(1)(d), a landlord may provide notice to a tenant by certified mail. Westphal's argument is without merit.

¶9 As far as I can tell, Westphal is also arguing that the evidence was insufficient to support the circuit court's finding that she was in possession of a cat, in violation of her lease, following the five-day notice. An appellate court will not reverse a circuit court's factual findings unless those findings are clearly erroneous. WIS. STAT. § 805.17(2). Peter testified that he observed a cat walking toward the door to Westphal's apartment, that he heard the door to her apartment open and close, and that he did not see the cat after the door closed. The circuit court found Peter's testimony to be credible and we will not disturb a court's

credibility determination unless that determination is clearly erroneous. *See State v. Thiel*, 2003 WI 111, ¶23, 264 Wis. 2d 571, 665 N.W.2d 305. Westphal has not presented this court with a persuasive argument that the court’s credibility and factual determinations were clearly erroneous.

¶10 Westphal asserts that Peter “lied under oath,” but does not cite this court to any evidence in the record to support this assertion. Westphal asserts that the circuit court failed to give sufficient weight to evidence that she presented that her brother had taken possession of her cat on June 12, 2015. However, the circuit court, not this court, determines the weight to be given to conflicting evidence. *See Micro-Managers, Inc. v. Gregory*, 147 Wis. 2d 500, 512, 434 N.W.2d 97 (Ct. App. 1988). Westphal asserts that the handbook provided to her by Bay Shore Apartments states that “A tenant may retain common household pets in the apartment.” However, the section in the handbook addressing pets begins by stating, “Please see pet lease for details,” and the lease clearly states that pets are not permitted without permission.

¶11 Finally, Westphal argues that the lease states that “the landlord agrees to discuss any proposed termination of tenancy with the tenant.” The lease provided that if Bay Shore Apartments decides to terminate the lease, Bay Shore Apartments will advise the tenant that he or she has ten days to discuss the proposed termination with Bay Shore Apartments and that “[i]f the Tenant requests the meeting, [Bay Shore Apartments] agrees to discuss the proposed termination with the Tenant.” Westphal points out that in the statement of facts set forth in her amended answer, she alleged that she requested a meeting to discuss the proposed termination, but that Bay Shore Apartments refused to discuss the issue with her. However, Westphal does not direct this court to any evidence presented at the hearing that supports this assertion, nor has she

presented this court with a persuasive argument that, assuming for the sake of argument that she had asked to discuss the lease termination, that Bay Shore Apartments' refusal to meet with her prevented Bay Shore Apartments from terminating her lease.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

